

ILLINOIS REGISTER
DEPARTMENT OF REVENUE
NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Uniform Penalty and Interest Act
- 2) Code Citation: 86 Ill. Adm. Code 700
- 3) Section Number: 700.500 Proposed Action: Amendment
- 4) Statutory Authority: 35 ILCS 5/911.3
- 5) A Complete Description of the Subjects and Issues Involved: 86 Ill. Adm. Code Section 700.500(c) currently provides guidance on the order in which the Department will apply a payment that is insufficient to pay the entire liability for tax, penalty and interest for which the payment was made.

Various statutes allow or require the Department to apply overpayments of tax to other liabilities. Section 2505-275 of the Department of Revenue Law of the Civil Administrative Code of Illinois allows the Department to offset an overpayment of one tax against a liability for any other tax it administers and to enter into agreements with the Secretary of the Treasury of the United States to offset an overpayment of Illinois tax against a federal tax liability. IITA Section 911.2 allows the Department to pay income tax overpayments to other states to satisfy taxes owed by the taxpayer to those states. Section 2505-650 of the Department of Revenue Law of the Civil Administrative Code of Illinois provides for applying tax overpayments against delinquent child support obligations of the taxpayer. Section 2505-655 of the Department of Revenue Law of the Civil Administrative Code of Illinois provides for applying tax overpayments against past due court fees. Section 10 of the Illinois State Collection Act of 1986 provides for applying tax overpayments against other liabilities owed to the State.

IITA Section 911.3 states the order in which an income tax overpayment must be applied among these various liabilities if the overpayment is insufficient to pay all of them. This rulemaking expands the payment application ordering rule in 86 Ill. Adm. Code Section 700.500 to apply the ordering rule in IITA Section 911.3 to all taxes administered by the Department, because no other ordering rule is mandated by any law and using the same ordering rule for all taxes avoids confusion for the Department and for taxpayers.

- 6) Will this proposed amendment replace an emergency rule currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this proposed amendment contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? No
- 10) Statement of Statewide Policy Objectives: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.

- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this notice to:

Paul Caselton
Deputy General Counsel - Income Tax
Illinois Department of Revenue
Legal Services Office
101 West Jefferson
Springfield, Illinois 62794

(217) 782-7055

- 12) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Small business and not-for-profit corporations who have tax overpayments that must be applied against other obligations will know in which order the overpayment will be applied against those liabilities.
- B) Reporting, bookkeeping or other procedures required for compliance: None.
- C) Types of professional skills necessary for compliance: None.

- 13) Regulatory Agenda on which this rulemaking was summarized: July 2005

The full text of the Proposed Amendment begins here:

SUBPART E: PAYMENT APPLICATION

Section 700.500 Payment Application

- a) *Payments received from a taxpayer shall be applied against the outstanding liability of the taxpayer, or to an agreed portion of the outstanding portion of the outstanding liability, in the following order: the principal amount of the tax, then penalty, and then interest. (Section 3-9 of the Act)*
- b) A taxpayer may direct payment to a particular liability at the time payment is made to the Department. If a taxpayer has multiple liabilities to the Department, either based upon multiple taxes or multiple reporting periods, the taxpayer should identify the liability to which payment is to be directed.
- c) In the absence of direction from the taxpayer as to which of a taxpayer's outstanding liabilities payment is to be made, the Department will direct payments made by taxpayers to the oldest outstanding liability first, with payment directed first to the principal amount of the liability and any excess then directed to penalty and then to interest. If there remain funds after application of the payment to the oldest outstanding liability in the manner noted above, the remainder will be directed to the next oldest liability in the same manner.

d) Section 2505-275 of the Department of Revenue Law of the Civil Administrative Code of Illinois provides that, in the case of overpayment of any tax liability arising from an Act administered by the Department, the Department may credit the amount of the overpayment and any interest thereon against any final tax liability arising under that or any other Act administered by the Department. The Department may enter into agreements with the Secretary of the Treasury of the United States (or his or her delegate) to offset all or part of an overpayment of such a tax liability against any liability arising from a tax imposed under Title 26 of the United States Code. Section 2505-650 of the Department of Revenue Law of the Civil Administrative Code of Illinois provides that, upon certification of past due child support amounts from the Department of Public Aid, the Department of Revenue may collect the delinquency in any manner authorized for the collection of any tax administered by the Department of Revenue. Section 2505-655 of the Department of Revenue Law of the Civil Administrative Code of Illinois provides that, upon certification by the Clerk of the Circuit Court of the amounts of delinquent court fees, the Department of Revenue may collect the past due fees by intercepting the tax refund of any person owing the fees. Section 10 of the Illinois State Collection Act of 1986 provides that the Department's Debt Collection Bureau shall serve as the primary debt collecting entity for the State and in that role shall collect debts on behalf of agencies of the State, using all legal authority available to the Department to collect debt referred to it by other agencies of this State. IITA Section 911.2 provides that a tax officer of another state of the United States may request that the Department withhold payment of a refund claimed by a taxpayer under the IITA for application against a delinquent income tax liability owe by the taxpayer to that state. IITA Section 911.3 provides rules for determining in which order an overpayment will be applied when more than one of these provisions is applicable. Pursuant to these provisions:

- 1) In the case of an overpayment for which the taxpayer has requested a refund or credit, the Department may credit the overpayment against any final tax liability arising under any Act administered by the Department. The Department will apply any such overpayment first to the oldest outstanding final liability arising under the same Act as the overpayment, with payment directed first to the principal amount of the liability and any excess then directed to penalty and then to interest, and shall apply any remaining amount of the overpayment to the next oldest final liability arising under the same Act as the overpayment in the same manner until all such liabilities are paid or the entire amount of the overpayment has been used.
- 2) Any amount of overpayment remaining after application of paragraph (1) shall then be applied first to the oldest unpaid final tax liability arising under any other Act, first to the liability, then to penalty, and then to interest, and then to the next oldest unpaid final tax liability in the same manner, until all such liabilities are paid or the entire amount of the overpayment has been used. For purposes of this paragraph (2), the determination of which liability is oldest shall be based upon the date on which payment of the liability was due without regard to due dates for accelerated or estimated payments.
- 3) Any amount of overpayment remaining after application of paragraphs (1) and (2) of this subsection shall be applied in the following order:

- A) against any existing, applicable request to withhold a refund to collect certified past due child support amounts under Section 2505-650 of the Department of Revenue Law of the Civil Administrative Code of Illinois;
- B) against any existing, applicable request to withhold a refund to collect any debt owed to the State;
- C) against any existing, applicable request made by the Secretary of the Treasury of the United States, or his or her delegate, to withhold a refund to collect any tax liability arising from Title 26 of the United States Code;
- D) against any existing, applicable refund withholding request made pursuant to IITA Section 911.2 of this Act; and
- E) against any existing, applicable request to withhold a refund to collect certified past due fees owed to the Clerk of the Circuit Court as authorized under Section 2505-655 of the Department of Revenue Law of the Civil Administrative Code of Illinois.

(Source: Amended at 30 Ill. Reg. _____, effective _____)